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UNITED STATES DISTRICT COURT

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NORTHERN DISTRICT OF CALIFORNIA

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IN RE TESLA INC. SECURITIES
LITIGATION

Case No. 18-cv-04865-EMC

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**COURT'S PROPOSED VERDICT
FORM**

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Docket Nos. 520, 528

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The Court's proposed verdict form is below. The Court explains each section of the

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proposed verdict form as follows.

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First, as the Court has previously explained, it generally prefers to use a general verdict

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form where appropriate to do so for clarity and the sake of simplicity. Courts in other securities

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class actions—including this Court—have previously used general verdict forms to decide

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liability. *See generally* Docket No. 476 (providing examples of general verdict forms used in

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other securities cases). The Court has therefore adopted Plaintiff's proposed form of verdict for

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the Rule 10B-5 Claim Liability section.

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Second, for the Rule 10B-5 Claim Damages section, the parties disagree about whether the

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verdict form should include either an empty table where the jury can write in their determinations

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of artificial inflation and implied volatilities, a prefilled table using the calculations of Plaintiff's

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expert, or both an empty table and a prefilled table. *See* Docket Nos. 528-1 (Defendants' Second

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Amended Proposed Verdict, or "Def. Verdict") at 4–6, Docket No. 520-1 (Plaintiff's Second

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Amended Proposed Verdict, or "Pl. Verdict") at 3–5. If the evidence at trial is sufficient for a

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reasonable juror to conclude that Tesla stock was artificially inflated by some but not all of the

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1   amount of inflation described by Professor Hartzmark in his report, then the Court will include a

2   blank table instead of a table with prefilled numbers. The Court will not include two separate

3   tables (one blank and one prefilled).

4   　　　　Defendants also seek to have the jury answer two questions that are not included in

5   Plaintiff's proposed verdict form. *See* Def. Verdict at 4–5. Defendants contend that the jury must

6   make a separate finding regarding the date in which the market price of Tesla stock returned to the

7   level that it would have been trading at absent any material misrepresentations, and whether

8   Plaintiff has proven what the implied volatilities for each Tesla stock option traded during each

9   day of the Class Period would have been but for Mr. Musk's tweets. *Id.* Neither question is

10   necessary because the jury will already be making these determinations by calculating the amount

11   of artificial inflation and the "but for" implied volatility percentages proved by Plaintiff for each

12   day of the Class Period. The Court has thus omitted these questions from the proposed verdict

13   form.

14   　　　　Third, for the Section 20(A) Claim Liability section, the Court has incorporated

15   Defendants' proposed section because it includes a question regarding the good faith defense.

16   　　　　Finally, there are two key differences in the last section of the verdict form regarding

17   allocation of responsibility. First, the parties disagree about whether the PSLRA requires a

18   statement-by-statement allocation of responsibility between the defendants. Second, the parties

19   disagree about whether the jury should decide that the defendant made a "knowing violation" or

20   acted with actual knowledge /deliberate recklessness.

21   　　　　As for the first point of dispute, the Court agrees with Plaintiff that no aspect of the statute

22   requires the jury to determine responsibility between the defendants for *each* statement. The

23   PSLRA requires the jury to "make findings . . . concerning . . . the percentage of responsibility of

24   [defendants], measured as a percentage of the total fault of all persons who caused or contributed

25   to the loss incurred by the plaintiff; and whether such person knowingly committed a violation of

26   the securities laws." 15 U.S.C. § 78u-4(f)(3)(A). Moreover, neither the *Vivendi* nor the

27   *Household* verdict forms required a statement-by-statement allocation of responsibility. *See*

28   Docket No. 593-3 at 69; Docket No. 593-2 at 42. The Court has thus incorporated Plaintiff's

1   proposal because Defendants have not shown that the jury needs to decide whether each defendant

2   acted with scienter for each false statement.

3   Second, as for the level of scienter required for the allocation of responsibility, the PSLRA

4   requires the jury to decide whether a defendant "knowingly committed a violation of the securities

5   laws." 15 U.S.C. § 78u-4(f)(3)(A)(iii). This is because any defendant who knowingly violated

6   securities laws is jointly and severally liable under 15 U.S.C. § 78u-4(f)(2)(A). The Court has

7   adopted Plaintiff's proposed language regarding whether the relevant Defendants committed a

8   knowing violation of the federal securities laws.

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10   **IT IS SO ORDERED**.

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12   Dated: January 17, 2023

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14   _____

15   EDWARD M. CHEN
        United States District Judge

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A.   RULE 10B-5 CLAIM: LIABILITY

Statement No. 1: "Am considering taking Tesla private at $420. Funding secured."

1.   Has Plaintiff proved their Rule 10b-5 Claim against Elon Musk for Statement No. 1 identified above?

Yes: _____   No: _____

2.   Has Plaintiff proved their Rule 10b-5 Claim against Tesla Inc. for Statement No. 1 identified above?

Yes: _____   No: _____

_____

PLEASE PROCEED TO THE NEXT PAGE.

Statement No. 2: "Investor support is confirmed. Only reason why this is not certain is that it's continent on a shareholder vote."

3.   Has Plaintiff proved their Rule 10b-5 Claim against Elon Musk for Statement No. 2 identified above?

Yes: _____   No: _____

4.   Has Plaintiff proved their Rule 10b-5 Claim against Tesla Inc. for Statement No. 2 identified above?

Yes: _____   No: _____

IF YOU CHECKED "YES" FOR ONE OR MORE QUESTIONS IN STATEMENT NOS. 1 OR 2, PLEASE PROCEED TO THE NEXT PAGE.

IF YOU CHECKED "NO" FOR EVERY QUESTION IN STATEMENT NOS. 1 AND 2, PLEASE PROCEED TO SECTION E.

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B.   **RULE 10B-5 CLAIM: DAMAGES**

1.   Determine the amount of artificial inflation per share of Tesla stock proved by Plaintiff on each date during the Class Period and write it in the table below.

	07-Aug	08-Aug	09-Aug	10-Aug	13-Aug	14-Aug	15-Aug	16-Aug	17-Aug
($/share)	$__.__	$__.__	$__.__	$__.__	$__.__	$__.__	$__.__	$__.__	$__.__

PLEASE PROCEED TO THE NEXT PAGE.

2.   Determine the "but for" implied volatility percentages proved by Plaintiff for each option contract maturity date during the Class Period and write it in the table below.

		Day of Class Period at Close of Market							
		07-Aug	08-Aug	09-Aug	10-Aug	13-Aug	14-Aug	15-Aug	16-Aug
Maturity Date	Aug 10, 2018	____%	____%	____%	**NA**	**NA**	**NA**	**NA**	**NA**
	Aug 17, 2018	____%	____%	____%	____%	____%	____%	____%	____%
	Aug 24, 2018	____%	____%	____%	____%	____%	____%	____%	____%
	Aug 31, 2018	____%	____%	____%	____%	____%	____%	____%	____%
	Sep 7, 2018	____%	____%	____%	____%	____%	____%	____%	____%
	Sep 14, 2018	____%	____%	____%	____%	____%	____%	____%	____%
	Sep 21, 2018	____%	____%	____%	____%	____%	____%	____%	____%
	Sep 28, 2018	**NA**	**NA**	____%	____%	____%	____%	____%	____%
	Oct 19, 2018	____%	____%	____%	____%	____%	____%	____%	____%
	Nov 16, 2018	____%	____%	____%	____%	____%	____%	____%	____%
	Dec 21, 2018	____%	____%	____%	____%	____%	____%	____%	____%
	Jan 18, 2019	____%	____%	____%	____%	____%	____%	____%	____%
	Feb 15, 2019	____%	____%	____%	____%	____%	____%	____%	____%
	Mar 15, 2019	____%	____%	____%	____%	____%	____%	____%	____%
	Jun 21, 2019	____%	____%	____%	____%	____%	____%	____%	____%
	Aug 16, 2019	____%	____%	____%	____%	____%	____%	____%	____%
	Jan 17, 2020	____%	____%	____%	____%	____%	____%	____%	____%

PLEASE PROCEED TO THE NEXT PAGE.

3.   Determine the amount of artificial inflation per Tesla corporate bond proved by Plaintiff on each date during the Class Period and write it in the table below.

	07-Aug	08-Aug	09-Aug	10-Aug	13-Aug	14-Aug	15-Aug	16-Aug	17-Aug
2019 Note									
2021 Note									
2022 Note									

PLEASE PROCEED TO THE NEXT PAGE.

C.   SECTION 20(A) CLAIM: LIABLITY

If you answered "Yes" to one or more questions in Section A, please answer the following questions.

1.   Has Plaintiff proved the Section 20(a) Claim as to any of the Tesla Director Defendants (check all that apply):

Brad W. Buss: Yes: _____   No: _____

Robyn Denholm: Yes: _____   No: _____

Ira Ehrenpreis: Yes: _____   No: _____

Antonio J. Gracias: Yes: _____   No: _____

James Murdoch: Yes: _____   No: _____

Kimbal Musk: Yes: _____   No: _____

Linda Johnson Rice: Yes: _____   No: _____

2.   If you answered "Yes" in response to Question No. 1 as to any Defendant, have Defendants proved a Good Faith Defense as to that Defendant (check all that apply):

Brad W. Buss: Yes: _____   No: _____

Robyn Denholm: Yes: _____   No: _____

Ira Ehrenpreis: Yes: _____   No: _____

Antonio J. Gracias: Yes: _____   No: _____

James Murdoch: Yes: _____   No: _____

Kimbal Musk: Yes: _____   No: _____

Linda Johnson Rice: Yes: _____   No: _____

PLEASE PROCEED TO THE NEXT PAGE.

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D. **ALLOCATION OF RESPONSIBILITY**

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3   1.   For any Defendant whom you found liable, did that Defendant commit a knowing
              violation of the federal securities laws? Only answer this question as to the

4   Defendants against whom you found that Plaintiff proved a claim.

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6   Elon Musk: Yes: _____   No: _____

7   Tesla: Yes: _____   No: _____

8   Brad W. Buss: Yes: _____   No: _____

       Robyn Denholm: Yes: _____   No: _____
9
       Ira Ehrenpreis: Yes: _____   No: _____
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       Antonio J. Gracias: Yes: _____   No: _____
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       James Murdoch: Yes: _____   No: _____
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       Kimbal Musk: Yes: _____   No: _____
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       Linda Johnson Rice: Yes: _____   No: _____
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2.   Please decide each Defendant's share of responsibility for Plaintiff's losses. Only assign a percentage of responsibility to those Defendants whom you found liable, including those who acted recklessly. The total must add up to 100%.

Elon Musk: _____%

Tesla: _____%

Brad W. Buss: _____%

Robyn Denholm: _____%

Ira Ehrenpreis: _____%

Antonio J. Gracias: _____%

James Murdoch: _____%

Kimbal Musk: _____%

Linda Johnson Rice: _____%

PLEASE PROCEED TO THE NEXT PAGE.

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E. **<u>RETURN OF VERDICT</u>**

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       Once the form is completed, the foreperson for the jury must sign and date it below.

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Dated: _____   Signed_____
                                                Jury Foreperson

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